IN THE HIGH COURT OF JUDICATURE OF
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MRS. JUSTICE T.MEENA KUMARI
AND
THE HON'BLE MR. JUSTICE G.CHANDRAIAH

WRIT PETITION NO. 18223 OF 2007

Dated : August 28, 2007

Between:

The Government of Andhra Pradesh,
Rep. By its Secretary, Finance & Planning Department,
Secretariat Buildings, Hyderabad and others

Petitioner

AND

M.A. Rasheed

Respondent

THE HON'BLE MRS. JUSTICE T.MEENA KUMARI
AND
THE HON'BLE MR. JUSTICE G.CHANDRAIAH

WRIT PETITION NO. 18223 OF 2007

ORAL ORDER: **(per THE HON'BLE MRS. JUSTICE T.MEENA KUMARI)**

Seeking a writ of certiorari to call for the records relating to the order dated 26.04.2007 passed in O.A. No.

5585 of 2006 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad, and to set aside the same, the petitioner filed this writ petition.

The respondent filed the above O.A. before the Tribunal assailing the proceedings Memo No. 16535/481/A1/Admn.III/2005 dated 22.05.2006 issued by the first petitioner herein, as illegal, arbitrary and contrary to Rule 33(e)(i) of the A.P. State and Subordinate Service Rules, 1996. The respondent herein, while working as Senior Accountant at the District Treasury Office, Mahboobnagar, was trapped by the Anti-Corruption Bureau on 30.05.1988 when he demanded and accepted illegal gratification of Rs.235/- from one Sri B. Rangaiah, Senior Accountant, District Co-Operative Audit Office, Mahaboobnagar and, therefore, disciplinary proceedings were initiated against him for the misconduct and the Tribunal for Disciplinary Proceedings, ultimately recommended to the first petitioner herein to revert the respondent to the original post. The first petitioner provisionally accepting the report of the Tribunal, issued show cause notice to the respondent, to show cause why the proposed punishment should not be imposed. The respondent herein submitted his explanation, which was not accepted and vide GO Ms. No. 151 Finance & Planning (Fin. Wing OPSC) Department dated 04.09.1992, the first petitioner reverted the respondent to the post of Junior Accountant for a period of 5 years.

Accordingly, the respondent was reverted on the afternoon of 22.9.1992 and completed the stipulated period of five years punishment by 22.9.1997. Thereafter vide proceedings No. A3/3153/97-3 dated 25.9.1997, the respondent was re-promoted as Senior Accountant. The respondent made representations to the petitioners, in hierarchy, to restore his seniority in the cadre of Senior Accountant, on par with his juniors, which ultimately culminated into issuance of Memo No.16535/481/A1/Admn.III/2005 dated 22.5.2006 of first petitioner. The respondent preferred appeal against the said Memo which was also rejected vide Memo No. 3282/A1/Admn.III/2006 dated 5.9.2006 issued by the first respondent, rejecting the request of the respondent to restore his seniority.

Aggrieved thereby, the respondent filed OA No. 5585 of 2006 and the Administrative Tribunal, vide the orders impugned in this writ petition allowed the O.A. observing as under:

> *"… The applicant on his re-promotion is entitled for restoration of his seniority in the category of Senior Accountant from 1.4.1981 on par with his juniors in accordance with Rule 33(e)(i) of A.P. State and Subordinate Service Rules and for all other consequential benefits. In view of the impugned memo, issued rejecting the applicant's claim vide Memo Dated 22.5.2006 is in violation of Rule 33(e)(i) of the A.P. State and Subordinate Service Rules, the same is set aside. The respondents are directed to complete the above exercise within a period of three months from the*

date of receipt of a copy of this order…"

It is the contention of the learned Government Pleader for Services II appearing for the petitioners that since GO Ms. No. 151 Finance & Planning (FW OPSC) Dated 4.9.1992, whereby punishment was imposed on the respondent, does not speak of the respondent regaining the original seniority on completion of five years of punishment, he is not entitled for restoration of seniority in the category of Senior Accountant.

The whole issue revolves round the question as to whether after completion of five years of punishment, the respondent is entitled to his original seniority in the cadre of Senior Accountant.

Admittedly, GO Ms. No. 151 Finance & Planning (FW OPSC) Dated 4.9.1992, issued by the first petitioner, imposing punishment on the respondent, is silent about the said aspect. The petitioner relies on Rule 33(e)(i) of the A.P. State and Subordinate Service Rules lays down that where a member of service, class or category, is reduced for specified period, to a lower service, class or category or grade, in cases where the reduction does not operate to postpone future increment, the seniority of such member on re-promotion shall, unless the terms of the order of punishment provides otherwise, be fixed in the higher services, class, or category to which it would have

been fixed but for his reduction. As stated earlier, when the GO, by which punishment is imposed, specifically prescribes the term of punishment as five years, the petitioners cannot deny seniority to the respondent on his re-promotion, in the absence of any Rule. Admittedly, the executive instructions issued from time to time, cannot have overriding effect on Rule 33(e)(i) of the A.P. State and Subordinate Service Rules. The respondent has completed the punishment period by 22.9.1997 and, therefore, at this length of time, the respondent cannot be denied his seniority. The Tribunal has exhaustively dealt with this issue assigning cogent and clinching reasons in allowing the O.A. No ground whatsoever is made out to depart from the reasons assigned by the Tribunal. Therefore, we do not find any illegality in the reasoning accorded by the Tribunal.

Consequently, the Writ Petition is liable to be dismissed and is accordingly dismissed, being devoid of merits. No order as to costs.

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T.MEENA KUMARI, J.

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G.CHANDRAIAH, J.

August 28, 2007
MAS